

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID MICHAEL AARON BAKER,

Plaintiff,

BERNARD EDWARD WARNER, and
JEFFREY A. UTTECHT,

Defendants.

CASE NO. 15-5298 RJB-KLS

ORDER ON REPORT AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S.

Magistrate Judge Karen L. Strombom (Dkt. 46), Plaintiff's Objection to Report and Recommendation (Dkt. 51), the Motion for Joinder of Persons Needed for Just Adjudication (Dkt. 52) filed by William Davis, and the Motion for Joinder of Persons Needed for Just Adjudication (Dkt. 60) filed by Kimothy Wynn. The Court has considered the Report and Recommendation, pleadings filed regarding the objections to the Report and Recommendation, the pleadings filed regarding Plaintiff's motion, and the remaining record.

In this civil rights case, Plaintiff, a *pro se* prisoner, claims his First Amendment rights

were violated by Defendants' application of Washington Administrative Code ("WAC") § 137-

1 48-020, which restricts prisoner's ability to receive mail containing sexually explicit material.
2 Dkt. 1-1. The Report and Recommendation recommends denial of several other inmates'
3 motions to join the case and for denial of class certification. For the reasons provided below, the
4 Report and Recommendation (Dkt. 46) should be adopted.

5 **I. FACTS**

6 The background facts and procedural history are in the Report and Recommendation
7 (Dkt. 46) and are adopted here.

8 Originally filed in Thurston County, Washington Superior Court, Plaintiff states in his
9 Complaint that this action is intended as a "class action." *Id.* After the case was removed,
10 several non-party inmates filed motions to join the case as "persons needed for just
11 adjudication." Dkts. 17, 19, 21-36. Plaintiff has argued that this case is a "class action." Dkt.
12 42. The Report and Recommendation recommends denial of the motions for joinder. Dkt. 46. It
13 further recommends denial of class certification. *Id.*

14 The Plaintiff filed objections to the Report and Recommendation, arguing that the
15 regulation at issue "infringes on the rights of the class and our family members." Dkt. 51. He
16 identifies the class as "being 17,000 inmates incarcerated [sic] in Washington Department of
17 Corrections." *Id.* He argues that they have common questions. *Id.* Plaintiff argues that certain
18 of the parties that filed motions for joinder did, in fact, grieve the actions taken against them. *Id.*
19 He asserts that "we do meet [Rule 23]" requirements. *Id.*

20 After the Report and Recommendation was filed, William Davis and Kimothy Wynn,
21 other non-party inmates, filed Motions for Joinder of Persons Needed for Just Adjudication for
22 19. Dkts. 52 and 60. These pleadings are the same as or substantially similar as the Motion for
23 Joinder of Persons Needed for Just Adjudication filed by the other non-party inmates. Dkts. 17,
24 19, 21-36.

II. DISCUSSION

A. PLAINTIFF'S OBJECTIONS TO REPORT AND RECOMMENDATION

3 Plaintiff files several pages of objections to the Report and Recommendation that largely
4 echo arguments raised in the initial pleadings. His objections do not provide a basis to reject the
5 Report and Recommendation.

6 Plaintiff argues that the Report and Recommendation improperly recommends denial of his
7 motion for class certification (Dkt. 42). Dkt. 51. As stated in the Report and Recommendation,
8 Plaintiff fails to make any of the required showings under Fed. R. Civ. P. 23 in the pleadings he
9 has filed. The recommendation to deny class certification is proper.

10 Plaintiff's arguments regarding joinder of the other inmates are substantially similar to those
11 raised in his prior pleadings and are addressed in the Report and Recommendation. The Report
12 and Recommendation (Dkt. 46) should be adopted.

B. MOTION FOR JOINDER FILED AFTER REPORT AND RECOMMENDATION

14 The Motions for Joinder of Persons Needed for Just Adjudication (Dkts. 52 and 60), filed by
15 William Davis and Kimothy Wynn, should be denied. The reasoning in the Report and
16 Recommendation regarding the other motions for joinder applies (Dkt. 46, at 4-6) and is adopted
17 here for the purposes of these motions (Dkts. 52 and 60).

III. ORDER

- The Report and Recommendation (Dkt. 46) **IS ADOPTED**;
- All the Motions for Joinder of Persons Needed for Just Adjudication (Dkts. 17, 19, 21-36, 52 and 60) **ARE DENIED**;
- The Motion for Class Certification (Dkt. 42) **IS DENIED**; and
- This case is re-referred to U.S. Magistrate Judge Karen L. Strombom.

1 The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Judge
2 Karen L. Strombom, all counsel of record and to any party appearing *pro se* at said party's last
3 known address.

4 Dated this 1st day of February, 2016.

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7 ROBERT J. BRYAN
8 United States District Judge
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